

amended. Title III of the Act is classified generally to subchapter I (§2511 et seq.) of chapter 13 of Title 19, Customs Duties. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19 and Tables.

RELATIONSHIP TO OTHER INFLATION ADJUSTMENT AUTHORITIES

Pub. L. 108-375, div. A, title VIII, §807(c), Oct. 28, 2004, 118 Stat. 2011, provided that:

“(1) Section 35A of the Office of Federal Procurement Policy Act [41 U.S.C. 431a], as added by subsection (a), supersedes the applicability of any other provision of law that provides for the adjustment of a dollar threshold that is adjustable under such section.

“(2) After the date of the enactment of this Act [Oct. 28, 2004], a dollar threshold adjustable under section 35A of the Office of Federal Procurement Policy Act, as added by subsection (a), shall be adjusted only as provided under that section.”

§ 432. Value engineering

(a) In general

Each executive agency shall establish and maintain cost-effective value engineering procedures and processes.

(b) “Value engineering” defined

As used in this section, the term “value engineering” means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life cycle costs.

(Pub. L. 93-400, §36, as added Pub. L. 104-106, div. D, title XLIII, §4306(a), Feb. 10, 1996, 110 Stat. 665.)

EFFECTIVE DATE

For effective date and applicability of section, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of this title.

§ 433. Acquisition workforce

(a) Applicability

Except as provided in subsection (h)(3) of this section, this section does not apply to an executive agency that is subject to chapter 87 of title 10.

(b) Management policies

(1) Policies and procedures

The head of each executive agency, after consultation with the Administrator for Federal Procurement Policy, shall establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in section 2301(b) of title 5.

(2) Uniform implementation

The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

(3) Government-wide policies and evaluation

The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that such policies are consistent with the policies and procedures established and enhanced system of incentives provided pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 263 note). The Administrator shall evaluate the implementation of the provisions of this section by executive agencies.

(c) Senior procurement executive authorities and responsibilities

Subject to the authority, direction, and control of the head of an executive agency, the senior procurement executive of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this section. The senior procurement executive shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

(d) Management information systems

The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition workforce related to implementation of this section. To the maximum extent practicable, such data requirements shall conform to standards established by the Office of Personnel Management for the Central Personnel Data File.

(e) Applicability to acquisition workforce

The programs established by this section shall apply to the acquisition workforce of each executive agency. For purposes of this section, the acquisition workforce of an agency consists of all employees serving in acquisition positions listed in subsection (g)(1)(A) of this section.

(f) Career development

(1) Career paths

The head of each executive agency shall ensure that appropriate career paths for personnel who desire to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior acquisition positions. The head of each executive agency shall make information available on such career paths.

(2) Critical duties and tasks

For each career path, the head of each executive agency shall identify the critical acquisition-related duties and tasks in which, at minimum, employees of the agency in the career path shall be competent to perform at full performance grade levels. For this purpose, the head of the executive agency shall provide appropriate coverage of the critical duties and tasks identified by the Director of the Federal Acquisition Institute.

(3) Mandatory training and education

For each career path, the head of each executive agency shall establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency shall also encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

(4) Performance incentives

The head of each executive agency shall provide for an enhanced system of incentives for the encouragement of excellence in the acquisition workforce which rewards performance of employees that contribute to achieving the agency's performance goals. The system of incentives shall include provisions that—

(A) relate pay to performance (including the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 263(b) of this title); and

(B) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving such cost goals, schedule goals, and performance goals.

(g) Qualification requirements**(1) In general**

(A) Subject to paragraph (2), the Administrator shall establish qualification requirements, including education requirements, for the following positions:

(i) Entry-level positions in the General Schedule Contracting series (GS-1102).

(ii) Senior positions in the General Schedule Contracting series (GS-1102).

(iii) All positions in the General Schedule Purchasing series (GS-1105).

(iv) Positions in other General Schedule series in which significant acquisition-related functions are performed.

(B) Subject to paragraph (2), the Administrator shall prescribe the manner and extent to which such qualification requirements shall apply to any person serving in a position described in subparagraph (A) at the time such requirements are established.

(2) Relationship to requirements applicable to defense acquisition workforce

The Administrator shall establish qualification requirements and make prescriptions under paragraph (1) that are comparable to those established for the same or equivalent positions pursuant to chapter 87 of title 10 with appropriate modifications.

(3) Approval of requirements

The Administrator shall submit any requirement established or prescription made under paragraph (1) to the Director of the Office of

Personnel Management for approval. If the Director does not disapprove a requirement or prescription within 30 days after the date on which the Director receives it, the requirement or prescription is deemed to be approved by the Director.

(h) Education and training**(1) Funding levels**

(A) The head of an executive agency shall set forth separately the funding levels requested for education and training of the acquisition workforce in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31.

(B) Funds appropriated for education and training under this section may not be obligated for any other purpose.

(2) Tuition assistance

The head of an executive agency may provide tuition reimbursement in education (including a full-time course of study leading to a degree) in accordance with section 4107 of title 5 for personnel serving in acquisition positions in the agency.

(3) Acquisition workforce training fund

(A) The Administrator of General Services shall establish an acquisition workforce training fund. The Administrator shall manage the fund through the Federal Acquisition Institute to support the training of the acquisition workforce of the executive agencies, except as provided in subparagraph (D). The Administrator shall consult with the Administrator for Federal Procurement Policy in managing the fund.

(B) There shall be credited to the acquisition workforce training fund 5 percent of the fees collected by executive agencies (other than the Department of Defense) under the following contracts:

(i) Governmentwide task and delivery-order contracts entered into under sections 253h and 253i of this title.

(ii) Governmentwide contracts for the acquisition of information technology as defined in section 11101 of title 40 and multi-agency acquisition contracts for such technology authorized by section 11314 of such title.

(iii) Multiple-award schedule contracts entered into by the Administrator of General Services.

(C) The head of an executive agency that administers a contract described in subparagraph (B) shall remit to the General Services Administration the amount required to be credited to the fund with respect to such contract at the end of each quarter of the fiscal year.

(D) The Administrator of General Services shall transfer to the Secretary of Defense fees collected from the Department of Defense pursuant to subparagraph (B), to be used by the Defense Acquisition University for purposes of acquisition workforce training.

(E) The Administrator of General Services, through the Office of Federal Acquisition Pol-

icy, shall ensure that funds collected for training under this section are not used for any purpose other than the purpose specified in subparagraph (A).

(F) Amounts credited to the fund shall be in addition to funds requested and appropriated for education and training referred to in paragraph (1).

(G) Amounts credited to the fund shall remain available to be expended only in the fiscal year for which credited and the two succeeding fiscal years.

(H) This paragraph shall cease to be effective five years after November 24, 2003.

(i) Provisions relating to reemployment

(1) Policies and procedures

The head of each executive agency, after consultation with the Administrator and the Director of the Office of Personnel Management, shall establish policies and procedures under which the agency head may reemploy in an acquisition-related position (as described in subsection (g)(1)(A)) an individual receiving an annuity from the Civil Service Retirement and Disability Fund, on the basis of such individual's service, without discontinuing such annuity. The head of each executive agency shall keep the Administrator informed of the agency's use of this authority.

(2) Service not subject to CSRS or FERS

An individual so reemployed shall not be considered an employee for the purposes of chapter 83 or 84 of title 5.

(3) Criteria for exercise of authority

Polices¹ and procedures established pursuant to this subsection shall authorize the head of the executive agency, on a case-by-case basis, to continue an annuity if—

(A) the unusually high or unique qualifications of an individual receiving an annuity from the Civil Service Retirement and Disability Fund on the basis of such individual's service,

(B) the exceptional difficulty in recruiting or retaining a qualified employee, or

(C) a temporary emergency hiring need,

makes the reemployment of an individual essential.

(4) Reporting requirement

The Administrator shall submit annually to the Committee on Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the use of the authority under this subsection, including the number of employees reemployed under authority of this subsection.

(5) Sunset provision

The authority under this subsection shall expire on December 31, 2011.

(Pub. L. 93-400, § 37, as added Pub. L. 104-106, div. D, title XLIII, § 4307(a)(1), Feb. 10, 1996, 110 Stat. 666; amended Pub. L. 108-136, div. A, title XIV, § 1412(b), Nov. 24, 2003, 117 Stat. 1664; Pub. L.

109-163, div. A, title VIII, § 821(a), (b)(1), Jan. 6, 2006, 119 Stat. 3386; Pub. L. 109-313, § 4, Oct. 6, 2006, 120 Stat. 1737.)

REFERENCES IN TEXT

Section 5051(c) of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (b)(3), is section 5051(c) of Pub. L. 103-355, which is set out as a note under section 263 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-163, § 821(b)(1), substituted “Except as provided in subsection (h)(3) of this section, this section” for “This section”.

Subsec. (h)(3)(A). Pub. L. 109-163, § 821(a)(1), substituted “, except as provided in subparagraph (D)” for “other than the Department of Defense”.

Subsec. (h)(3)(D) to (H). Pub. L. 109-163, § 821(a)(2), added subpar. (D) and redesignated former subpars. (D) to (G) as (E) to (H), respectively.

Subsec. (i). Pub. L. 109-313 added subsec. (i).

2003—Subsec. (h)(3). Pub. L. 108-136 added par. (3).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-313 effective 60 days after Oct. 6, 2006, see section 6 of Pub. L. 109-313, set out as a note under section 5316 of Title 5, Government Organization and Employees.

Pub. L. 109-163, div. A, title VIII, § 821(d), Jan. 6, 2006, 119 Stat. 3386, provided that: “The amendments made by this section [amending this section and repealing provisions set out as a note under this section] shall apply with respect to fees collected under contracts described in section 37(h)(3)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 433(h)(3)(B)) after the date of the enactment of this Act [Jan. 6, 2006].”

EFFECTIVE DATE

For effective date and applicability of section, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of this title.

DEFENSE ACQUISITION UNIVERSITY FUNDING

Pub. L. 109-163, div. A, title VIII, § 821(c), Jan. 6, 2006, 119 Stat. 3386, provided that: “Amounts transferred under section 37(h)(3)(D) of the Office of Federal Procurement Policy Act [41 U.S.C. 433(h)(3)(D)] (as amended by subsection (a)) for use by the Defense Acquisition University shall be in addition to other amounts authorized for the University.”

PURPOSES OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title XIV, § 1412(a), Nov. 24, 2003, 117 Stat. 1664, provided that: “The purposes of this section [amending this section and enacting provisions set out as notes under this section] are to ensure that the Federal acquisition workforce—

“(1) adapts to fundamental changes in the nature of Federal Government acquisition of property and services associated with the changing roles of the Federal Government; and

“(2) acquires new skills and a new perspective to enable it to contribute effectively in the changing environment of the 21st century.”

INAPPLICABILITY OF SUBSECTION (h)(3) TO DEPARTMENT OF DEFENSE ACQUISITION WORKFORCE

Pub. L. 108-136, div. A, title XIV, § 1412(c), Nov. 24, 2003, 117 Stat. 1665, which provided that section 1412 of Pub. L. 108-136 was inapplicable to the acquisition workforce of the Department of Defense and that fees covered by subsec. (h)(3) of this section were to be reduced by 5 percent to reflect the Department's nonparticipation in the acquisition workforce training fund, was repealed by Pub. L. 109-163, div. A, title VIII, § 821(b)(2), Jan. 6, 2006, 119 Stat. 3386.

ACQUISITION WORKFORCE RECRUITMENT PROGRAM

Pub. L. 108-136, div. A, title XIV, § 1413, Nov. 24, 2003, 117 Stat. 1665, provided that:

¹ So in original. Probably should be “Policies”.

“(a) DETERMINATION OF SHORTAGE CATEGORY POSITIONS.—For purposes of sections 3304, 5333, and 5753 of title 5, United States Code, the head of a department or agency of the United States (other than the Secretary of Defense) may determine, under regulations prescribed by the Office of Personnel Management, that certain Federal acquisition positions (as described in section 37(g)(1)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 433(g)(1)(A))) are shortage category positions in order to use the authorities in those sections to recruit and appoint highly qualified persons directly to such positions in the department or agency.

“(b) TERMINATION OF AUTHORITY.—The head of a department or agency may not appoint a person to a position of employment under this section after September 30, 2007.

“(c) REPORT.—Not later than March 31, 2007, the Director of the Office of Personnel Management, in consultation with the Administrator for Federal Procurement Policy, shall submit to Congress a report on the implementation of this section. The report shall include—

“(1) a list of the departments and agencies that exercised the authority provided in this section, and whether the exercise of the authority was carried out in accordance with the regulations prescribed by the Office of Personnel Management;

“(2) the Director’s assessment of the efficacy of the exercise of the authority provided in this section in attracting employees with unusually high qualifications to the acquisition workforce; and

“(3) any recommendations considered appropriate by the Director on whether the authority to carry out the program should be extended.”

ARCHITECTURAL AND ENGINEERING ACQUISITION WORKFORCE

Pub. L. 108-136, div. A, title XIV, §1414, Nov. 24, 2003, 117 Stat. 1666, provided that: “The Administrator for Federal Procurement Policy, in consultation with the Secretary of Defense, the Administrator of General Services, and the Director of the Office of Personnel Management, shall develop and implement a plan to ensure that the Federal Government maintains the necessary capability with respect to the acquisition of architectural and engineering services to—

“(1) ensure that Federal Government employees have the expertise to determine agency requirements for such services;

“(2) establish priorities and programs (including acquisition plans);

“(3) establish professional standards;

“(4) develop scopes of work; and

“(5) award and administer contracts for such services.”

§ 434. Modular contracting for information technology

(a) In general

The head of an executive agency should, to the maximum extent practicable, use modular contracting for an acquisition of a major system of information technology.

(b) Modular contracting described

Under modular contracting, an executive agency’s need for a system is satisfied in successive acquisitions of interoperable increments. Each increment complies with common or commercially accepted standards applicable to information technology so that the increments are compatible with other increments of information technology comprising the system.

(c) Implementation

The Federal Acquisition Regulation shall provide that—

(1) under the modular contracting process, an acquisition of a major system of information technology may be divided into several smaller acquisition increments that—

(A) are easier to manage individually than would be one comprehensive acquisition;

(B) address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable solutions for attainment of those objectives;

(C) provide for delivery, implementation, and testing of workable systems or solutions in discrete increments each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions; and

(D) provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occur during conduct of the earlier increments;

(2) a contract for an increment of an information technology acquisition should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued and, if the contract for that increment cannot be awarded within such period, the increment should be considered for cancellation; and

(3) the information technology provided for in a contract for acquisition of information technology should be delivered within 18 months after the date on which the solicitation resulting in award of the contract was issued.

(Pub. L. 93-400, §38, formerly §35, as added Pub. L. 104-106, div. E, title LII, §5202(a), Feb. 10, 1996, 110 Stat. 690; renumbered §38, Pub. L. 104-201, div. A, title X, §1074(d)(1), Sept. 23, 1996, 110 Stat. 2660.)

EFFECTIVE DATE

Section effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 702.

§ 435. Levels of compensation of certain contractor personnel not allowable as costs under certain contracts

(a) Determination required

For purposes of section 2324(e)(1)(P) of title 10 and section 256(e)(1)(P) of this title, the Administrator shall review commercially available surveys of executive compensation and, on the basis of the results of the review, determine a benchmark compensation amount to apply for each fiscal year. In making determinations under this subsection the Administrator shall consult with the Director of the Defense Contract Audit Agency and such other officials of executive agencies as the Administrator considers appropriate.

(b) Benchmark compensation amount

The benchmark compensation amount applicable for a fiscal year is the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination under subsection (a) of this section is made.